

FILED

NOV 01 2005

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCELO BRINGAS-MURRIETA, aka
Marcelo Beltran,

Defendant - Appellant.

No. 04-50615

D.C. No. CR-04-02243-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted September 14, 2005^{**}
Pasadena, California

Before: SILVERMAN and CALLAHAN, Circuit Judges, and DUFFY,^{***} District
Judge.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-
3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* FED. R. APP. P. 34(a)(2).

^{***} The Honorable Kevin T. Duffy, Senior United States District Judge
for the Southern District of New York, sitting by designation.

In *United States v. Booker*, 125 S.Ct. 738 (2005), the Supreme Court struck down the federal sentencing guidelines to the extent that the Sentencing Reform Act of 1984 mandated the imposition of sentences predicated on facts not found by the jury or admitted by the defendant. Because the district court here handed down its sentence under the assumption that the guidelines were mandatory, we remand the case to afford the district court with the opportunity to re-sentence the appellant in light of *Booker* and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc).

We add only that there was no error arising from the district court's reliance on the appellant's prior (2004) removal from the United States in enhancing the appellant's sentence under 8 U.S.C. § 1326(b) and U.S.S.G. § 2L1.2(b)(1)(D). See *United States v. Luna-Madellaga*, 315 F.3d 1224, 1226-27 (9th Cir. 2003), *cert. denied*, 540 U.S. 853 (2003). Accordingly, the appellant's sentence is **REMANDED** for re-sentencing procedures consistent with *Booker* and *Ameline*.